

## THIRD DIVISION

**[ A.M. NO. P-06-2276 (FORMERLY OCA IPI NO. 03-1603-P), February 05, 2007 ]**

**BEATRIZ F. VILAR, COMPLAINANT, VS. MARISSA ANGELES,  
CLERK OF COURT, MUNICIPAL TRIAL COURT, PANTABANGAN,  
NUEVA ECIJA, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is the Complaint<sup>[1]</sup> dated March 31, 2003 of Beatriz F. Vilar (complainant) charging Marissa Angeles (respondent), Clerk of Court, Municipal Trial Court (MTC), Pantabangan, Nueva Ecija, with Dishonesty, Misappropriation and Acts Unbecoming of a Clerk of Court, relative to Civil Case No. 1411 entitled "*Beatriz F. Vilar v. Yolly Uera*."

Complainant alleges that respondent received from one Yolanda Uera (Uera) the sums of Thirty Two Thousand (P32,000.00) Pesos and Eighty Eight Thousand (P88,000.00) Pesos by way of deposit as evidenced by Official Receipt Nos. 12575750 and 12575749, respectively. The money was intended as payment for the construction materials taken by Uera from the hardware store of the complainant; that despite demand, respondent failed and refused to release the money and there is a strong probability that the said money was misappropriated and converted to the personal use of respondent.

In her Counter Affidavit dated April 19, 2004,<sup>[2]</sup> respondent avers that it was not complainant, but her lawyer, who demanded and approached her to give the amount of P120,000.00; that she gave P10,000.00 to complainant's lawyer when the latter demanded the amount of P120,000.00 because that was the only money she has; and that what were stated in the complaint were all lies and the accusations were not true.

In its Resolution of August 25, 2004,<sup>[3]</sup> the Court referred the administrative complaint to Executive Judge Bayani V. Vargas, Branch 38, Regional Trial Court (RTC), San Jose City, Nueva Ecija for investigation, report and recommendation.

In a letter dated December 8, 2004,<sup>[4]</sup> Judge Vargas initially reported that during the informal hearing, complainant granted the plea of respondent not to pursue the complaint provided that respondent settle her financial obligation.

During the scheduled hearing on January 21, 2005,<sup>[5]</sup> complainant manifested that she will pursue her administrative case against respondent considering that only Ten Thousand (P10,000.00) Pesos had been partially paid by respondent.

In view of the appointment of investigating Executive Judge Vargas to the RTC, Br. 219, Quezon City, the Court, in its Resolution of June 22, 2005,<sup>[6]</sup> designated Acting Executive Judge Joselito Cruz Villarosa to conduct an investigation, report and recommendation on the subject administrative case.

In her Affidavit with Motion for Reconsideration dated October 25, 2005,<sup>[7]</sup> respondent admits having received the deposited amounts of P32,000.00 and P88,000.00 on April 26, 2002 and June 10, 2002, respectively. Respondent states that she has no intention to use the money as her own because the same is intended as payment to complainant; that the total amount of P51,000.00 has already been returned to complainant on installment basis; that complainant assured her that she (complainant) is willing to withdraw the complaint on agreement that she (respondent) will pay back the remaining balance on installment basis; that she failed to pay complainant due to the fact that her son was hospitalized on August 8-12, 2005 due to heart ailment and she spent P37,000.00 for it; that in her 22 years of service, she has never been charged either criminally or administratively and has no intention of besmirching her reputation, as it is the only legacy she can leave with her children. Respondent prays that the Court give her time to fully pay her balance to plaintiff considering the fact that complainant is willing to withdraw the complaint as soon as the remaining balance is fully paid. She further avers that her husband is jobless and she is the breadwinner of the family with two children about to finish their course; that her older son is still recovering from heart ailment and needs continuous medication; that her family lives on a hand-to-mouth existence and is dependent on her salary as a clerk of court.

In his Investigation, Report and Recommendation dated November 16, 2005,<sup>[8]</sup> the Investigating Judge found respondent guilty of dishonesty and acts unbecoming of a clerk of court and recommended the penalty of six (6) months suspension without pay and ordered her to pay complainant the amount of Seventy Five Thousand (P75,000.00) Pesos within fifteen (15) days upon receipt of the decision.

In its Resolution of June 14, 2006,<sup>[9]</sup> the Court referred the report of the Investigating Judge to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Memorandum of October 20, 2006,<sup>[10]</sup> the OCA submitted its evaluation and recommendation, to wit:

x x x

After careful evaluation of the records of the case, the undersigned concurs with the findings of the Investigating Judge as the same is in conformity with the law and jurisprudence. The undersigned, however, differs from the penalty as recommended by the investigating judge which we believe to be too light.

The respondent admitted having received money in the mentioned amounts with the instruction of forwarding the same to the complainant. The respondent failed to deliver the money as she was instructed to do.

Worst she used the same for the hospitalization of her son. What

complicates the predicament of respondent is her issuance of official receipts of the court for the deposited amounts thus, making the deposit fiduciary funds or public funds which the Court is obligated to return. It should be noted that a fiduciary fund is in the nature of a trust fund which should not be withdrawn without the authority of the court (RE: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte, A.M. No. 95-4-143-RTC, 13 March 1998, 287 SCRA 510). Its use for private purposes constitutes misappropriation of public funds.

The conduct and behavior of everyone connected with an office charged with the dispensation of justice, the courts below not excepted, from the presiding judge to the lowest clerk, must be circumscribed with the heavy burden of responsibility. A public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives (*Civil Service Commission v. Cortez*, GR No. 155732, 03 June 2004).

Particularly referring to Clerks of Court, and as the custodians of the court's funds, revenues, records, properties and premises, they perform very delicate functions and are liable for any loss, shortage, destruction or impairment thereof (*Toribio v. Ofilas*, A.M. No. P-03-1714, 13 February 2004).

For those who have fallen short of their accountabilities, we have not hesitated to impose the ultimate penalty. This Court had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system (*Office of the Court Administrator v. Galo*, A.M. No. P-93-989, 21 September 1999, 314 SCRA 705, pp. 711-712).

The Court, in *Racho v. Dulatre* (A.M. No. P-01-1468, 10 February 2005, 450 SCRA 568, 576), held that the failure of a clerk of court to account for money deposited with him, and adequately explain and present evidence thereon, constitutes gross dishonesty.

Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 991936, effective September 27, 1999), provides:

*Classification of Offenses.* -Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1<sup>st</sup> Offense - Dismissal

20. Conduct prejudicial to the best interest of the service

1<sup>st</sup> Offense - Suspension (6 mos. 1 day to 1 year)

2<sup>nd</sup> Offense - Dismissal

x x x

Respondent's financial difficulty occasioned by the hospitalization of her son does not justify her use of the funds entrusted her.

Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service however, provides that in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. Verification from the Documentation Division, Office of the Court Administrator shows that this is the first time that respondent has ever been charged administratively. Thus, instead of imposing the penalty of dismissal which is the imposable penalty for commission of the first offense of dishonesty and for conduct prejudicial to the best interest of the service which is penalized for six (6) months and one (1) day suspension, respondent, should instead be suspended for a period of one (1) year without pay with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely. She should however still be required to pay complainant Beatriz F. Vilar the amount of Seventy Five Thousand (Php75,000.00) Pesos fifteen (15) days upon receipt of the decision of the Court.

**WHEREFORE,** premises considered, the undersigned respectfully recommend to the Honorable Court that Marissa Angeles, Clerk of Court, MTC, Pantabangan, Nueva Ecija be found guilty of Dishonesty and Acts Unbecoming of a Clerk of Court and recommends the penalty of one (1) year suspension without pay and ordered to pay complainant Beatriz F. Vilar the amount of Seventy Five Thousand (Php75,000.00) Pesos fifteen (15) days upon receipt of the decision of the Court.

Except for the finding that respondent used the money for the hospitalization of her son, we agree with the findings of the OCA and adopt its recommendations.

A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice.<sup>[11]</sup>

Time and again, we have reminded court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody.<sup>[12]</sup> Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.<sup>[13]</sup>